



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,240	08/05/2003	Michael K. Martin	031599/259295	6398

826 7590 02/05/2007

ALSTON & BIRD LLP  
BANK OF AMERICA PLAZA  
101 SOUTH TRYON STREET, SUITE 4000  
CHARLOTTE, NC 28280-4000

EXAMINER

ELOSHWAY, NIKI MARINA

ART UNIT

PAPER NUMBER

3781

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/05/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/634,240

Applicant(s)

MARTIN ET AL.

Examiner

Niki M. Eloshway

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133) Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-6,8,10,15,17-19 and 21-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-6, 8, 10, 15, 17-19, 21-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3, 8, 10, 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cousseau (U.S. 6,779,675) in view of Huang et al. (U.S. 6,766,919). Cousseau teaches a container body 3, an opening sealed by panel 2 and a pull feature 11. The panel 3 and container are made from a polymer material, as stated in col. 2 line 64 through col. 3 line 2. Cousseau does not teach that the panel is heat staked to the remaining portion of the end wall. Huang et al. teaches that it is known to heat stake two elements of a frangible closure together (see col. 6 lines 5-9). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Cousseau with the panel being heat staked, as taught by Huang, since heat staking is a well known and widely used process of joining elements together.

The second opening at the opposite end, set forth in claim 3, is discussed in col. 2 lines 64-65 of Cousseau.

3. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cousseau (U.S. 6,779,675) in view of Huang et al. (U.S. 6,766,919), as applied to claim 3 above, and further in view of Bianchi (U.S. 5,782,373). The modified container of Cousseau discloses the claimed invention except for the closure comprising a metal end. Bianchi teaches that it is known to provide a container with a metal closure which is attached by double seaming. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Cousseau with the closure

Art Unit: 3781

comprising a metal end attached by double seaming, as taught by Bianchi, in order to give the closure the strength and rigidity characteristic of metal and in order to securely fasten the closure to the container body.

4. Claims 4 and 6 rejected under 35 U.S.C. 103(a) as being unpatentable over Cousseau (U.S. 6,779,675) in view of Huang et al. (U.S. 6,766,919), as applied to claim 3 above, and further in view of Maska (U.S. 4,883,198). The modified container of Cousseau discloses the claimed invention except for the closure comprising a metal end. Maska teaches that it is known to provide a container with a metal closure (see col. 2 lines 42-56). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Cousseau with the closure comprising a metal end, as taught by Maska, in order to give the closure the strength and rigidity characteristic of metal.

5. Claims 18, 19, 21 and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cousseau (U.S. 6,779,675) in view of Huang et al. (U.S. 6,766,919) and Belokin, Jr. et al. (U.S. 5,123,461). Cousseau teaches a container body 3, an opening sealed by panel 2 and a pull feature 11. The panel 3 and container are made from a polymer material, as stated in col. 2 line 64 through col. 3 line 2. Cousseau does not teach that the panel is heat staked to the remaining portion of the end wall or that the container body flares outwardly. Huang et al. teaches that it is known to heat stake two elements of a frangible closure together (see col. 6 lines 5-9). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Cousseau with the panel being heat staked, as taught by Huang, since heat staking is a well known and widely used process of joining elements together.

Belokin, Jr. et al. teaches that it is known to construct a container with an outward flare (see figure 1). It would have been obvious to one having ordinary skill in the art at the time the invention was

Art Unit: 3781

made to provide the modified container of Cousseau with the body being flared outwardly, as taught by Belokin, Jr. et al., in order to allow nesting of containers.

6. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cousseau (U.S. 6,779,675) in view of Huang et al. (U.S. 6,766,919) and Belokin, Jr. et al. (U.S. 5,123,461), as applied to claim 21 above, and further in view of Maska (U.S. 4,883,198). The modified container of Cousseau discloses the claimed invention except for the closure comprising a metal end. Maska teaches that it is known to provide a container with a metal closure (see col. 2 lines 42-56). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Cousseau with the closure comprising a metal end, as taught by Maska, in order to give the closure the strength and rigidity characteristic of metal.

#### *Response to Arguments*

7. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

#### *Conclusion*

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

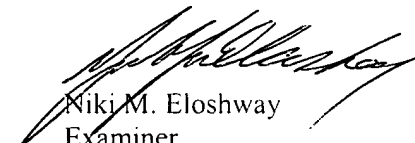
Art Unit: 3781

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshway whose telephone number is 571-272-4538. The examiner can normally be reached on Thursdays and Fridays 8 a.m. to 4 p.m..

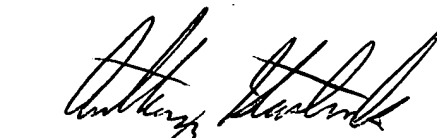
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Niki M. Eloshway  
Examiner  
Art Unit 3781

nme



ANTHONY D. STASHICK  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700